

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                       |                 |
|-----------------------|-----------------|
| IN THE MATTER OF THE  | §               |
| PETITION OF KEVIN L.  | § No. 472, 2008 |
| DICKENS FOR A WRIT OF | §               |
| MANDAMUS              | §               |

Submitted: December 31, 2008

Decided: January 16, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 16<sup>th</sup> day of January 2009, it appears to the Court that:

(1) The petitioner, Kevin L. Dickens, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Superior Court to rule on his application for *in forma pauperis* ("IFP") status and his motion for transcripts at State expense. Dickens also asks this Court to vacate the Superior Court's modified sentencing order of October 24, 2008 and reinstate its August 25, 2008 order providing that Dickens be housed at Sussex Correctional Institute ("SCI"). The State of Delaware has filed an answer requesting that Dickens' petition be dismissed. We find that Dickens' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

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<sup>1</sup> Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

(2) The record reflects that Dickens filed an appeal in this Court from the sentence imposed following his conviction of four counts of Assault in a Detention Facility and one count of Assault in the Second Degree. In conjunction with his appeal, Dickens designated the transcripts of his trial and sentencing. After the Clerk directed Dickens to make arrangements for payment of the court reporter, Dickens filed the instant petition for a writ of mandamus requesting that this Court order the Superior Court to rule on his previously-filed application for IFP status and his motion for transcripts at State expense and further requesting that this Court reinstate a previous order of the Superior Court providing that Dickens be housed at SCI.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>2</sup> As a condition precedent to the issuance of the writ, Dickens must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.<sup>3</sup>

(4) The Supreme Court docket reflects that the Superior Court ruled on Dickens' application for IFP status and his motion for transcripts at

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<sup>2</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>3</sup> *Id.*

State expense on January 2, 2009 and that the Superior Court's ruling was sent to Dickens on that date. Dickens' request for a writ of mandamus to require the Superior Court to rule on his application for IFP status and his motion for transcripts at State expense is, therefore, moot. Dickens' request that this Court reinstate the Superior Court's earlier sentencing order providing that Dickens be housed at SCI is also unavailing. Dickens has failed to demonstrate that he has a clear right to be housed at SCI. As such, we conclude that he has failed to demonstrate that he is entitled to a writ of mandamus with respect to that issue as well.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice